

ALFRED FORTIER (*Plaintiff*) APPELLANT;

1954

AND

*Nov. 18
*Dec. 20

WILFRID POULIN (*Defendant*) RESPONDENT;

AND

OVILA POULIN MIS-EN-CAUSE.

ON APPEAL FROM THE COURT OF QUEEN'S BENCH, APPEAL SIDE,
PROVINCE OF QUEBEC

Appeal—Jurisdiction—Creditor of \$430 seeking to have conveyance by debtor to wife set aside—Conveyance made through intermediary—Action paulienne—Test of this Court's jurisdiction.

Where a debtor is not in bankruptcy nor in liquidation, this Court is without jurisdiction to entertain an appeal in the action of a creditor holding a judgment for \$430 to set aside a conveyance made by the debtor to his wife through an intermediary. The test of this Court's competency is the value of the appellant's interest in the appeal, which, in this case, is below the required amount.

APPEAL from the judgment of the Court of Queen's Bench, appeal side, province of Quebec (1), dismissing the appellant's appeal from a judgment of the Superior Court in an action paulienne.

E. Veilleux, Q.C. for the appellant.

G. Roberge for the respondent.

R. Beaudoin, Q.C. for the mis-en-cause.

*PRESENT: Taschereau, Rand, Locke, Fauteux and Abbott JJ.

(1) Q.R. [1953] Q.B: 666.

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The judgment of the court was delivered by:—

RAND J.:—This is an action brought by a creditor holding a judgment against the respondent Wilfrid Poulin for \$430 and costs to set aside or to have declared void a transfer of an immovable alleged to have been fraudulently conveyed by Poulin to his wife, the respondent Yvonne Poulin, through the intermediation of the mis-en-cause. The debtor is not in bankruptcy, nor is there present any form of judicial liquidation, although he is claimed to be insolvent. The question of the jurisdiction of this Court therefore arises.

It is a settled rule that in these circumstances the benefit of a judgment recovered in an *action paulienne* enures solely to the creditor who is a party to it: Dalloz J.G. (1925) R.P. prem. partie, p. 223, notes 1, 2 and 3. On the other hand, treating the two conveyances as constituting a transfer from the husband to the wife and therefore void, the interest of the appellant is obviously limited to the judgment which he seeks to realize.

Although, then, the immovable may be worth more than \$2,000, the test of our competency to hear the appeal is the value of the appellant's interest in it: *City of Sydney v. Wright* (1); and since that value is below the required amount, we are without jurisdiction.

The appeal must be quashed with costs as of a motion to that effect.

Appeal quashed with costs.

Solicitors for the appellant: *Veilleux & Peloquin.*

Solicitors for the respondent: *Talbot & Roberge.*

Solicitor for the mis-en-cause: *Rosaire Beaudoin.*